

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF APPEALS

In re Patent Application of:	)	
<b>FLICK</b>	)	Examiner: <b>B. SWARTHOUT</b>
	)	
Serial No. <b>10/649,267</b>	)	Art Unit: <b>2636</b>
	)	
Filing Date: <b>AUGUST 27, 2003</b>	)	Attorney Docket No. <b>58180</b>
	)	
For: <b>VEHICLE SECURITY DEVICE</b>	)	
<b>INCLUDING PRE-WARN INDICATOR</b>	)	
<b>AND RELATED METHODS</b>	)	
	)	

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REQUEST FOR REHEARING  
UNDER 37 C.F.R. §41.52

Mail Stop Request For Rehearing  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Decision on Appeal of the Board of Patent Appeals and Interferences ("Board") of December 17, 2007, Appellant respectfully requests a rehearing before the Board pursuant to 37 C.F.R. §41.52. As a preliminary matter, Appellant thanks the Board for the careful and thorough examination of the present application and the relevant record, and for properly reversing the unfavorable decision by the Examiner. Based on the arguments presented below, Appellant requests the Board reconsider and withdraw the new grounds of rejections entered in the Decision on Appeal.

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**I. THE BOARD HAS OVERLOOKED THE ADVANTAGES OF THE CLAIMED INVENTION**

As an initial matter, Appellant respectfully notes to the Board that 113 U.S. patents have issued that list him as an inventor. Indeed, eight of these patents belong in the same art classification as the present application.

Appellant submits that the claimed invention, for example, in Claim 1, recites a pre-warn vehicle security device including a housing, a multi-stage sensor carried by the housing, and a pre-warn indicator carried by the housing. As discussed at paragraphs 8, 10, 40, and 49 of the present application, the claimed invention advantageously permits pre-warn features to be installed into a vehicle without replacing the existing vehicle security system. This is highlighted by the recitations of the corresponding method independent Claim 32, which is directed to a method for upgrading a vehicle security system in a vehicle.

More specifically, since the claimed invention includes a pre-warn indicator carried by the housing, the pre-warn vehicle security device of the claimed invention provides a pre-warn indication different from an existing alarm indication without modifying the existing alarm system indicator. In one embodiment, the pre-warn indication is emulated via the data communications bus of the vehicle. Indeed, dependent Claim 5, for example, recites the alarm controller of the vehicle generates a confirmation signal on the data communications bus extending throughout the vehicle and carrying data and address information thereover upon switching between armed and disarmed

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operational modes, and the pre-warn emulator causes the pre-warn indicator to provide a confirmation indication responsive to the confirmation signal. In other words, the pre-warn emulator utilizes the common disarm/arm chirping of factory alarm and keyless entry systems to provide a pre-warn indication. None of the cited prior art reference discloses or fairly suggests this above highlighted feature of the claims.

Moreover, the single housing of the claimed invention provides for advantageous and relatively easy installation of the pre-warn vehicle security device. Differently, the cited prior art teaches a hodgepodge approach of including different components in separate housings, for example, Zwern and Nykerk. These setups of the prior art make aftermarket installation of security devices into the existing vehicle system challenging. None of the cited prior art references discloses or fairly suggests a single housing carrying the pre-warn indicator, and the multi-stage sensor, as recited in independent Claim 1, for example.

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II. THE REJECTION OVER NYKERK IN VIEW OF ZWERN AND LEEN ET AL. IS BASED UPON MISAPPREHENDED RATIONALE AND THE BOARD HAS OVERLOOKED CLEAR TEACHINGS AWAY FROM THE SELECTIVE COMBINATION OF NYKERK IN VIEW OF ZWERN AND LEEN ET AL.

A. Claims 1, 17, 26, and 32 Are Patentable

The Board rejected independent Claims 1, 17, 26, and 32 over Nykerk in view of Zwern and Leen et al. Nykerk discloses a self-contained pre-warn control module 55 comprising a data bus 64, a microprocessor 60 coupled to the data bus, and a memory 82 coupled to the data bus. (Nykerk: Figures 1 and 4, reproduced below, & Col. 9, lines 59-63). Nykerk discloses the data bus extending only in the pre-warn control module, in other words, an internal, fully self-contained data bus. (Figure 4 & Col. 11, lines 11-21). Nykerk discloses connecting various components throughout the vehicle including, for example, headlights, horn, and park lights, using the conventional wiring harness and not the data bus contained within the pre-warn control module. (Col. 7, line 64 - Col. 8, line 13). More particularly, Nykerk teaches communications with security sensors and the external speaker through a conventional wiring harness. (Col. 8, lines 14-23).

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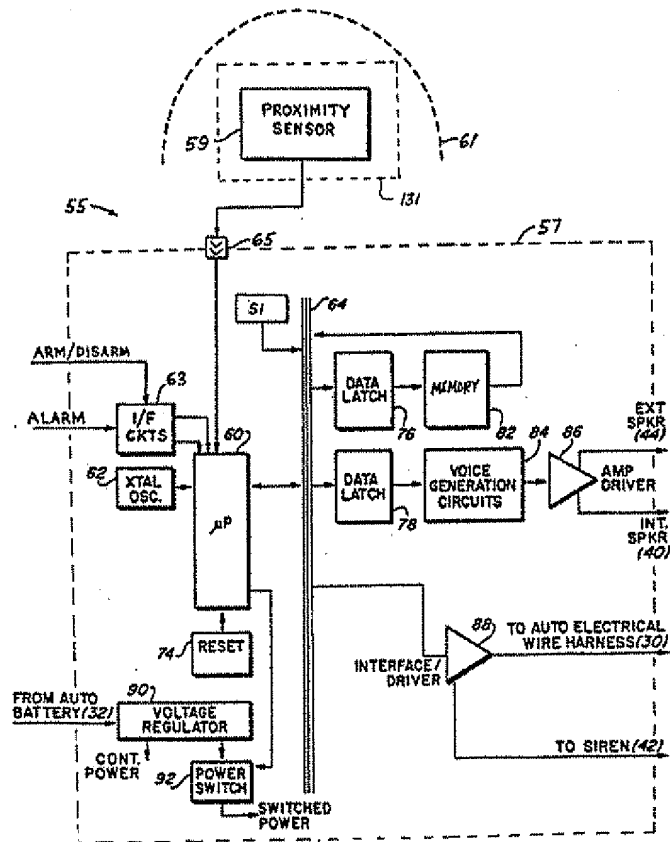


Figure 4 of Nykerk

The Board correctly notes that Nykerk fails to disclose a housing, and the multi-stage sensor and the pre-warn indicator being carried thereby, as recited by independent Claim 1, for example. The Board looks to Zwern for this deficiency. The Board also correctly notes that Nykerk and Zwern further fail to disclose a data communications bus extending throughout the vehicle and carrying data and address information thereover, as recited by independent Claim 1, for example. Moreover, Nykerk

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and Zwern fail to disclose the multi-stage sensor communicating a high security threat level to the alarm controller via the vehicle data communications bus, as recited in independent Claim 1, for example. Indeed, as discussed above, Nykerk discloses a hardwired dedicated line for each component approach. The Board looks to Leen et al. in an attempt to supply these critical deficiencies.

Zwern discloses an alarm system 10 that includes a voice processing device 12 and alarm controller 22 situated separately in another housing. (Col. 13, lines 25-29 & Figures 1-2). Furthermore, the Zwern patent discloses a sensor 26 and an alert indicator 18 disposed away from the housings of both the alarm controller and the voice processing device. The Board correctly notes that Zwern fails to disclose a single housing carrying multiple components and contended that such a feature would be obvious to a person of ordinary skill in the art. Leen et al. discloses a controller area network (CAN) within a vehicle.

Appellant submits that the Board has misapprehended and overlooked a clear teaching away between Nykerk, Zwern, and Leen et al. Appellant submits that the proposed combination of Nykerk, Zwern, and Leen et al. is improper because Nykerk teaches away from the selective modification of swapping the wiring harness for the CAN of Leen et al. More specifically, the pre-warn control module of Nykerk includes a voltage regulator 90 and a power switch 92 for the express purpose of selectively powering

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non-critical devices, such as, the interface/driver circuits 88, which manage connections to the internal, fully self-contained data bus. (Col. 12, lines 1-23). Indeed, the proximity sensor 59 is also selectively powered only during periods wherein the alarm unit is armed. In other words, while armed, the alarm unit is still operational since the proximity sensor had a direct hardwired connection to the microprocessor even while the self-contained data bus is un-powered. Nykerk discloses that only the microprocessor and interface circuit 63 use continuous power.

Appellant submits that by replacing the hardwired connections of the proximity sensor of Nykerk with the CAN of Leen et al., the advantageous power savings of Nykerk are lost. Indeed, by placing all the devices of Nykerk on a single communications medium, i.e. the internal, fully self-contained data bus, the devices must also be powered continuously with the data bus and microprocessor. Hence, because modifying Nykerk as suggested would destroy the power saving feature of Nykerk, the person of ordinary skill in the art would be taught away from such a selective modification.

Moreover, Appellant submits that the person of ordinary skill in the art would not take the multiple housings of Zwern and merge them into one housing including the proximity sensor of Nykerk. The proximity sensor of Nykerk is based upon sensing changes in a received RF signal from an RF oscillator 120. (Col. 15, line 63 through Col. 16, line 26). The sensed changes in the received RF signal directly relate to a potential large body mass

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approaching the vehicle. Appellant submits that including the proximity sensor of Nykerk into a common housing would impede its proper operation, i.e. change the principle of operation. Indeed, Nykerk teaches that the proximity sensor is not included within the control module and discusses that by "selectively positioning" the proximity sensor, (Col. 14, lines 23-24), the user can adjust the size of the detection field.

Furthermore, Appellant submits that the Board's stated motivation to modify Zwern and then combine it into Nykerk is improper. Appellant submits that the Board's stated motivation amounts to a conclusory statement of obviousness. The Supreme Court of the United States has deemed such conclusory statements of obviousness to be insufficient in stating a rationale to combine prior art references. See *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007), quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) ("Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.") (Emphasis added).

Accordingly, because there exists no proper motivation to modify Zwern and Nykerk as suggested and because shoehorning the proximity sensor of Nykerk (which corresponds to the multi-stage sensor of the claimed invention) into a common housing with the counterpart components would likely reduce the effective range if not disable the pre-warn capability of Nykerk, Appellant



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submits that the person of ordinary skill in the art would not make such a selective combination of Zwern and Nykerk. Moreover, Leen et al. adds nothing other than the disclosure of a vehicle data bus -a vehicle data bus that both Nykerk and Zwern purposefully chose to avoid interfacing with.

Hence, independent Claim 1 is patentable over Nykerk in view of Zwern and Leen et al. Independent Claims 17, 26, and 32 are similar to Claim 1, include similar recitations, were rejected similarly, and are patentable over Nykerk in view of Zwern and Leen et al. for similar reasoning.

#### B. Claim 10 Is Patentable

The Board rejected independent Claim 10 over Nykerk in view of Zwern and Leen et al. The patentability of Claims 1, 17, 26, and 32 over Nykerk in view of Zwern and Leen et al. is established above. Independent Claim 10 is similar to Claims 1, 17, 26, and 32, includes similar recitations, was rejected similarly, and is patentable over Nykerk in view of Zwern and Leen et al. for similar reasoning.

Moreover, Appellant notes none of the cited references discloses a pre-warn emulator for generating a high security threat level signal on the data communications bus extending throughout the vehicle and carrying data and address information thereover responsive to the sensed high security threat level, as recited in independent Claim 10. In other words, the Board's proposed combination fails to disclose or fairly suggest the pre-

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warn emulator, for example, switching between armed and disarmed operational modes based upon a mode change signal on the data communications bus extending throughout the vehicle and carrying data and address information thereover, as recited by dependent Claim 13. In other words, the pre-warn emulator arms and disarms based upon the pre-existing alarm system in the vehicle. Therefore, for this additional reason, independent Claim 10 is patentable over Nykerk in view of Zwern and Leen et al.

**III. THE REJECTION OVER BOREHAM ET AL. IN VIEW OF ZWERN AND NYKERK IS BASED UPON MISAPPREHENDED RATIONALE AND THE BOARD HAS OVERLOOKED CLEAR TEACHINGS AWAY FROM THE SELECTIVE COMBINATION OF BOREHAM ET AL. IN VIEW OF ZWERN AND NYKERK**

**A. Claims 1, 17, 26, and 32 Are Patentable**

The Board rejected independent Claims 1, 17, 26, and 32 over Boreham et al. in view of Zwern and Nykerk. Boreham et al. discloses a siren unit including a CPU, an audio driver coupled to the CPU, a loudspeaker coupled to the audio driver, and a serial interface coupled to the CPU. (Figure 1 & Col. 2, line 40-53). The serial interface couples the siren unit to the vehicle security control unit, the serial interface having an address field of 4 bits so the vehicle security control unit can address devices other than the siren unit. (Col. 6, lines 20-22).

The Board correctly notes that Boreham et al. fails to disclose a housing, and the multi-stage sensor and the pre-warn indicator being carried thereby, as recited by independent Claim

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1, for example. The Board looks to Zwern, discussed above, for these deficiencies.

The Board correctly notes that Boreham et al. and Zwern fail to disclose the multi-stage sensor is for sensing the high security threat level and communicating the sensed high security threat level to the alarm controller via the data communications bus extending throughout the vehicle and carrying data and address information thereover, and for sensing a low security threat level lower than the high security threat level, as recited by independent Claim 1, for example. The Board also correctly notes that Boreham et al. and Zwern also fail to disclose a pre-warn indicator carried by the housing and connected to the multi-stage sensor for generating a pre-warn indication responsive to the sensed low security threat level, as also recited in independent Claim 1, for example. The Board contended that the person of ordinary skill in the art would provide the pre-warning functionality of Nykerk into Boreham et al. to warn a potential intruder before sounding a full alarm.

Appellant submits that the Board has misapprehended and overlooked a clear teaching away between Boreham et al., Zwern, and Nykerk. Appellant submits that the Board's combination of Boreham et al., Zwern, and Nykerk is improper because of reasons similar to those discussed above regarding the combination of Nykerk, Zwern, and Leen et al. More specifically, Nykerk teaches away from the substitution of the data bus of Boreham et al. for the dedicated line coupling of the proximity sensor due to the

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loss of the power saving feature of Nykerk. Moreover, Appellant again submits that the person of ordinary skill in the art would not take the multiple housings of Zwern and merge them into one housing including the proximity sensor of Nykerk for the same reasons discussed above. Because of these reasons, Appellant submits that the person of ordinary skill in the art would not selectively combine Boreham et al., Zwern, and Nykerk.

Hence, independent Claim 1 is patentable over this combination of prior art references and, accordingly, the prior art. Independent Claims 17, 26, and 32 are similar to Claim 1, include similar recitations, were rejected similarly, and are patentable for similar reasoning. Their respective dependent claims, which recite yet further distinguishing features, are also patentable over the prior art and require no further discussion herein.

#### B. Claim 10 Is Patentable

The Board rejected independent Claim 10 over Boreham et al. in view of Zwern and Nykerk. The patentability of Claims 1, 17, 26, and 32 is established above. Independent Claim 10 is similar to Claims 1, 17, 26, and 32, includes similar recitations, was rejected similarly, and is patentable for similar reasoning.

Moreover, Appellant notes none of the cited references discloses a pre-warn emulator for generating a high security threat level signal on the data communications bus extending

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throughout the vehicle and carrying data and address information thereover responsive to the sensed high security threat level, as recited in independent Claim 10. In other words, the Board's proposed combination fails to disclose or fairly suggest the pre-warn emulator, for example, switching between armed and disarmed operational modes based upon a mode change signal on the data communications bus extending throughout the vehicle and carrying data and address information thereover, as recited by dependent Claim 13. In other words, the pre-warn emulator arms and disarms based upon the pre-existing alarm system in the vehicle.

Therefore, for this additional reason, independent Claim 10 is patentable over the prior art. Its respective dependent claims, which recite yet further distinguishing features, are also patentable over the prior art and require no further discussion herein.

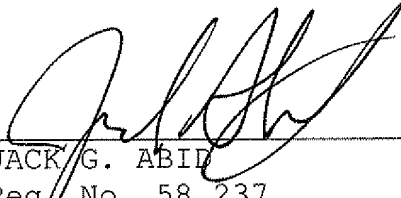
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**IV. CONCLUSION**

In view of the arguments present above, Appellant respectfully submits that all of the claims are patentable over the prior art. Appellant, therefore, respectfully requests that the Board reconsider and reverse the earlier unfavorable decision of the Board.

Respectfully submitted,



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